

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

FRANK VELIZ,

Plaintiff, Case No. 05-60039

v. District Judge Marianne O. Battani
Magistrate Judge R. Steven Whalen

MICHAEL BOURCHARD, et al.,

Defendants.

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ORDER

Before the Court is Plaintiff's self-styled Motion Demanding Trial by Court under Federal Rule 39(b) [Docket #14]. Defendant replies that he does not object to trial by the Court, but opposes the motion on procedural grounds, i.e. Plaintiff's failure to comply with Eastern District of Michigan Local Rules, e.g., failure to seek concurrence and failure to file a separate brief in support of the motion.

Since this is a *pro se* pleading filed by a now-incarcerated prison inmate, the Court will liberally construe it. *See Martin v. Overton*, 391 F.3d 710, 712 (6th Cir. 2004), citing *Haines v. Kerner*, 404 U.S. 519, 520-21, 92 S.Ct. 594, 30 L.Ed.2d 652 (1972); *Herron v. Harrison*, 203 F.3d 410, 414 (6th Cir. 2000) (*pro se* pleadings are held to "an especially liberal standard"); Fed.R.Civ.P. 8(f) ("All pleadings shall be so construed as to do substantial justice"). The Court will also overlook Plaintiff's failure to strictly comply with the

procedural requirements of the Local Rules.

Much of Plaintiff's motion discusses factual allegations in the Complaint, and appears to be more in the nature of a response to Defendant's Answer. It is not at all clear to the Court that Plaintiff seeks to knowingly and voluntarily waive his right to a jury trial and proceed to trial by the Court pursuant to Fed.R.Civ.P. 39(b). Indeed, it appears that Plaintiff is simply trying to preserve his right to *any* trial, as opposed to having his case summarily dismissed.

Accordingly, Plaintiff's motion will be DENIED WITHOUT PREJUDICE. Plaintiff's right to trial by jury is preserved, as is his right to request a trial by the Court under Rule 39(b) at a future time.

SO ORDERED.

S/R. Steven Whalen
R. STEVEN WHALEN
UNITED STATES MAGISTRATE JUDGE

Dated: December 20, 2005

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing order was served on the attorneys and/or parties of record by electronic means or U.S. Mail on December 20, 2005.

S/G. Wilson
Judicial Assistant